IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1508 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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L R PARMAR

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MR Shivang J. Shukla for Mr. Y.N OZA for Petitioner.

Mr. L.R. Pujari, AGP for Respondents.

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 17/08/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order dated 3.10.1987 whereby the petitioner has been required to pay use and occupation charges at market rate/rent for the period 1.11.1986 to 10.9.1987 at Rs. 736/- per month amounting to Rs. 7,605.30 ps., in 10 equal instalments, and Annexure `C'

dated 5.3.1988 whereby the petitioner's representation came to be rejected by respondent No.4, District Superintendent of Police, Himatnagar.

2. The petitioner while he was serving as a Reader/Police Sub-Inspector in the office of respondent No.4 at Himatnagar, District-Sabarkantha he was allotted residential quarter; that the petitioner came to be transferred from Himatnagar to Ahmedabad in August 1986 and he left Himatnagar on 6.8.1986. The petitioner was permitted to retain the quarter till 31.10.1986. The petitioner did not hand over the physical possession of the residential quarter which was allotted to him at Himatnagar till 10.9.1987. As the petitioner failed to vacate the residential quarter at Himatnagar impugned order dated 3.10.1987, Annexure "A" came to be passed requiring the petitioner to pay market rent at the rate of Rs. 736/per month treating the petitioner to be in unauthorised occupation of the premises for the period between 1.11.1986 to 10.9.1987. The petitioner thereafter made representation before respondent No.4 which representation came to be rejected vide order dated 5.3.1988 Annexure "C" by respondent No.4.

3. In the present petition, the petitioner has been challenging the order at Annexure "A" requiring the payment of market rent at Rs. 736/- per month for the period 1.11.1986 to 10.9.1987. There is no dispute that the petitioner was authorised to retain the residential quarter at Himatnagar till 31.10.1986.

4. It is submitted by Mr. Shukla, learned counsel for petitioner that as the petitioner's children were studying at Himatnagar and as he was not allotted any residential quarter at Ahmedabad where he was transferred from Himatnagar he had no option but to continue the residential quarter at Himatnagar. It is not the say of the petitioner that he claimed HRA after he is transferred to Ahmedabad and that he was not given HRA. All that has been stated is that he did not get HRA after he is transferred to Ahmedabad.

5. Admittedly, the petitioner was permitted to continue occupation of residential quarter at Himatnagar for a period of 2 months after he was transferred to Ahmedabad on 6.8.1986 and the market rent claimed in the impugned order is from 1st November 1986. It is stated that the petitioner requested for time till 10th September 1987 to retain the quarter at Himatnagar but the said request did not find favour with the respondent and the petitioner was only allowed/authorised to retain

the quarter till 31st of October 1986.

6. It is a settled legal position that a residential quarter by a Government servant on transfer/retirement can be retained for a period not beyond 2 months on payment of normal/usual rent and for the period beyond two months the occupation would be treated as unauthorised occupation, if otherwise not authorised to continue occupation. Thus the retention of residential quarter beyond the period of 2 months in the present case would be an unauthorised occupation and the rent would be charged according to the rules in that behalf. In the instant case, the petitioner retained the quarter or continued to occupy the quarter till 10.9.1987 without any authority and therefore the occupation of the residential quarter at Himatnagar would be nothing but an unauthorised occupation of the quarter/public premises by the petitioner and would be liable to pay the charges under the rules.

7. In view of the above, the impugned order at Annexure "A" cannot be regarded illegal, the petitioner therefore would not be entitled to the reliefs as he would be liable to pay the market rent for the period of unauthorised occupation of the residential quarter/public premises which was allotted to him while he was working as Reader/P.S.I. in the office of respondent No.4.

8. In the result, the petition, being devoid of merits, is liable to be dismissed. The petition dismissed accordingly. Rule is discharged.

[N.G. Nandi, J.]

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